

ORDINANCE PERTAINING TO
MESSAGE PARLORS

ADOPTED BY THE UNION COUNTY BOARD OF COMMISSIONERS ON JANUARY 4, 1977

RECORDED IN DOCKET 12 --- PAGE

WHEREAS, pursuant to Chapter 153A, Section 121, of the General Statutes of North Carolina, a county may by ordinance define, regulate, prohibit or abate acts, omissions or conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the county.

NOW, THEREFORE, the Board of Commissioners of Union County hereby adopts the following ordinance:

Section 1. Purpose.

To protect public health, safety, welfare and morals, the following privilege license provisions and regulations are ordained for the privilege of carrying on the business, trade or profession of massagist and for the operation or carrying on of the businesses, trades or professions commonly known as message parlors, health salons, physical culture studios, or similar establishments wherein message or physical manipulation of the human body is carried on or practiced. The provisions of this article shall not apply to a regularly established and licensed hospital, sanitarium, nursing home nor to an office or clinic operated and regularly used by a duly qualified and licensed medical practitioner, osteopath or chiropractor in connection with the practice of medicine, chiropractic or osteopathy.

Section 2. Definitions.

Unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings:

(1) Message means the manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping by hand or mechanical device.

(2) Message business means any establishment or business wherein message is practiced, including establishments commonly known as health clubs, physical culture studios, and message studios or parlors.

(3) Business or profession of message includes the message or treatment of any person for a fee or in expectation of a gratuity from the person massaged.

(4) Massagist means any person engaged in the business or profession of message.

Section 3. Licensing of message business operators.

(a) No person, partnership, corporation, or association shall operate a message business as herein defined unless such person, partnership, corporation or association shall have first applied for and received the privilege license provided by this section.

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(b) Every application for the privilege license prescribed herein shall be upon a form approved by the County Manager and shall be filed with the County Clerk. Every such application shall be made under oath and shall contain the following information:

(1) If the applicant is a person, the name and residence address of such person. If the applicant is a partnership, corporation or association, the registered name of the agent and the address of the registered office and the name and residence address of all persons having any legal or beneficial interest in such applicant; and

(2) The address of the premises where the massage business shall be located; and

(3) A complete statement of all convictions of any person whose name is required to be given in paragraph (b) (1) above for any felony or prostitution or any violation of the law relative to prostitution; and

(4) A complete statement of any revocation by any governmental unit of any license to operate a massage business or to engage in the business or profession of massage held by any person whose name is required to be given in paragraph (b) (1) above; and

(5) A complete statement of any conviction of any person whose name is required to be given in paragraph (b) (1) above; for violation of any statute, law, ordinance or regulation of any government concerning the operation of a massage business or the business or profession of massage; and

(6) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in paragraph (b) (1) above wherein the business or profession of massage is carried on; and

(7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

(c) The County Clerk shall transmit a copy of the application to the Sheriff's Department for an investigative report and to the Inspections Department to determine compliance with all zoning and building regulations and ordinances. The Sheriff's Department shall, within a reasonable time, not to exceed forty-five (45) days, report the results of their examination to the County Clerk.

(d) An application in proper form, accompanied by all reports required by this section, shall be submitted to the Board of County Commissioners, which shall approve such application if the Board of County Commissioners determines that:

(1) The application contains no misstatement of fact; and

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(2) The applicant, or any person having legal or beneficial interest in the applicant, has not been convicted of any crime involving sexual misconduct, including but not limited to North Carolina General Statutes 14-177 through North Carolina General Statutes 14-202.1, Article 26 (offenses against morality and decency) and North Carolina General Statutes 14-203 through 14-208, Article 27 (prostitution), or of any federal statute relating to prostitution or of any violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage; and

(3) The applicant conforms to all requirements of applicable zoning, building and fire prevention codes.

(4) The applicant or any person having a legal or beneficial ownership interest in the applicant has not, for the three-year period preceding the application, had a previously issued license for engaging in the business or profession of massage revoked.

(e) Upon approval of the application by the Board of County Commissioners and upon receipt of a one hundred dollar (\$100.00) license fee, the Union County Tax Collector shall issue a privilege license to applicant.

(f) A license issued pursuant to this section shall be revoked by action of the Board of County Commissioners if the Board of County Commissioners determines that:

(1) The licensee has violated any provisions of this article; or

(2) The licensee or any agent of the licensee employs or permits to be on the premises of the applicant's massage business any person practicing the business or profession of massage who has not been issued the privilege license required by Section 4 hereof, or whose license under Section 4 has been revoked; or

(3) The licensee or the legal or beneficial owner or any interest in the licensee is convicted of any crime involving sexual misconduct, including but not limited to North Carolina General Statutes 14-177 through North Carolina General Statutes 14-202.1, Article 26 (offenses against public morality and decency) and North Carolina General Statutes 14-203 through North Carolina General Statutes 14-208, Article 27 (prostitution); or

(4) Any employee of the licensee is convicted of any felony in connection with his or her employment or is convicted of any crime involving sexual misconduct, including but not limited to North Carolina General Statutes 14-177 through North Carolina General Statutes 14-202.1, Article 26 (offenses against public morality and decency) and North Carolina General Statutes 14-203 through North Carolina General Statutes 14-208, Article 27 (prostitution); or

(5) The licensee violates any zoning, building, or fire prevention ordinance.

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(g) A license issued pursuant to this article is void if the licensee moves or ceases operating a massage parlor at the location required to be stated in the application for license pursuant to Section 3 (b) (2).

Section 4. Licensing of massagist.

(a) No person shall engage in the business or profession of massage unless such person shall have first applied for and received the privilege license provided by this section.

(b) The application for the license required by this section shall be upon a form approved by the County Manager and shall be filed with the County Clerk. Such application shall be given under oath and shall contain the following information:

- (1) The name, age and residence address of the applicant; and
- (2) A complete statement of the previous business or occupation of the applicant for the two (2) years immediately preceding the date of application, including any massage establishment experience; and
- (3) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance;
- (4) A complete statement of any revocation of any license granted by any governmental unit to the applicant to engage in the business or profession of massage;
- (5) The date and place of applicant's birth, the name of applicant's parents and the residence address or addresses of the applicant for the five (5) years immediately preceding the date of application.

(c) The applicant shall submit, as part of the application required in Subsection (b) hereof, the following:

- (1) Fingerprints of the applicant taken by the Sheriff's Department, and
- (2) Two (2) recent photographs of the applicant's head and shoulders of a size and quality prescribed by the County Manager; and
- (3) A medical certificate signed by a physician licensed to practice in North Carolina within seven (7) days of the date of the application. The certificate shall state that the applicant was examined by the certifying physician and that the applicant is free from communicable disease.

The additional information required by this subsection shall be provided at the applicant's expense.

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(d) The County Clerk shall transmit a copy of the application to the Sheriff's Department for an investigative report. The Sheriff's Department shall within a reasonable time, not to exceed forty-five (45) days, report the results of its investigation to the County Clerk.

(e) An application in proper form shall be submitted to the Board of County Commissioners, together with all reports required by this section. The Board of County Commissioners shall approve such application if the Board of County Commissioners determines:

(1) That the applicant is at least eighteen (18) years of age;

(2) The application contains no misstatement of fact; and

(3) The applicant has not been convicted of any crime involving sexual misconduct, including but not limited to North Carolina General Statutes 14-177 through North Carolina General Statutes 14-202.1, Article 26 (offenses against public morality and decency) and North Carolina General Statutes 14-203 through 14-208, Article 27 (prostitution), or of any federal statute relating to prostitution, or other violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage; and

(4) The applicant has not, for the three-year period preceding the application had a previously issued license for engaging in the business or profession of massage revoked; and

(5) The applicant is free from communicable disease as evidenced by the medical required herein; and

(6) The applicant has not been previously convicted of any violation of any provision of this article.

(f) Upon approval of the application by the Board of County Commissioners and upon receipt of a fifty dollar (\$50.00) license fee, the Union County Tax Collector shall issue a privilege license to the applicant.

(g) The Board of County Commissioners shall have authority to direct that any person licensed under this section submit to a medical examination by a licensed physician approved by the Board of County Commissioners. This authority shall be exercised only when the Board of County Commissioners has reason to believe that any such person has contracted a communicable disease. Refusal to submit to such examination shall be grounds for revocation of such license as provided in Subsection (h) of this section. Notwithstanding the provisions of this subsection, every person licensed under this section shall file and continue to file with the County Clerk a new medical certificate with each application for renewal of the license prescribed by this section. Failure to file such updated certificates shall be grounds for revocation of such license as provided in Subsection (h) of this section.

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(h) A license issued pursuant to this section shall be revoked by action of the Board of County Commissioners if the Board of County Commissioners determines:

- (1) The licensee has violated any provision of this article; or
- (2) The Licensee is afflicted with a communicable disease; or
- (3) The licensee has failed to be examined by a licensed physician when required by the Board of County Commissioners pursuant to subsection (g) of this section, or has failed to file any medical certificate required by said subsection (g); or
- (4) The licensee has been convicted of a felony or any crime involving sexual misconduct, included by not limited to North Carolina General Statutes 14-177 through North Carolina General Statutes 14-202.1, Article 26 (offenses against public morality and decency) and North Carolina General Statutes 14-203 through North Carolina General Statutes 14-208, Article 27 (prostitution), or under any federal statute relating to prostitution or for violation of any laws or ordinance of any governmental unit related to the business or profession of massage.

Section 5. Employer to use only licensed employees.

No person, corporation, partnership, or association licensed under Section 3 hereof shall allow or permit any person to massage or treat any person upon the premises operated by the licensee unless the person giving such massage or treatment has complied with all requirements of licensing under Section 4, including periodic medical examinations by a licensed physician. Violation of this section shall be grounds for revocation of the license issued to such violator pursuant to this article.

Section 6. Posting of license.

(a) Every massagist shall post the license required by this article in his work area.

(b) Every person, corporation, partnership, or association licensed under Section 3 hereof shall display such license in a prominent place.

Section 7. Notice and hearing.

Before the Board of County Commissioners provokes a license issued pursuant to this article, or if the Board of County Commissioners determines reasonable grounds exist to deny an application for a license pursuant to this article, the Board of County Commissioners shall cause a written notice to be sent by certified mail to the licensee affected or applicant affected at the address stated in the license or application. This notice shall advise the affected party of a right to appear before the Board of County Commissioners with or without legal counsel at a stated time and place for the purpose of presenting any evidence relevant to such revocation or denial and for the purpose of hearing all evidence submitted and examining or cross-examining any person providing such evidence.

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Section 8. Hours of operation.

(a) No person licensed as a massagist under Section 4 hereof shall massage or treat any person or engage in the business or profession of massage before 8:00 a.m. or after 12:00 p.m., prevailing time.

(b) No person, corporation, partnership, or association licensed under Section 3 hereof shall admit customers or prospective customers or remain open for business or allow or permit or condone any massage or treatment of any person upon the premises before 8:00 a.m. or after 12:00 p.m., prevailing time.

(c) No person in charge of managing a massage business upon the premises shall allow, permit or condone any massage or treatment of any person before 8:00 a.m. or after 12:00 p.m., prevailing time.

(a) No person licensed as a masseur or masseuse under Section 4 hereof shall massage or treat any person under the age of eighteen (18) upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, or registered physical therapist, such order being dated and in the possession of the masseur or masseuse giving the massage or treatment. A violation of this subsection shall be grounds for revocation of any license issued to such violator pursuant to this article.

(b) No person, corporation, partnership or association licensed under Section 3 hereof shall allow, permit or condone the massage or treatment of any person under the age of eighteen (18) upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, or registered physical therapist, such order being dated and a true copy of such order being in the possession of the licensee before administration of any massage or treatment. A violation of this subsection shall be grounds for revocation of any license issued to such violator pursuant to this article.

(c) No person, corporation, partnership or association licensed pursuant to Section 3 of this article shall employ any person under the age of eighteen (18) years in the operation of a massage business.

Section 10. Massage by person of opposite sex prohibited.

(a) It shall be unlawful for any person, corporation, partnership, or association licensed pursuant to Section 3 hereof to knowingly provide, allow or permit a massage or treatment to be given by a person to a person of the opposite sex.

(b) It shall be unlawful for any person licensed as a massagist under Section 4 hereof to massage or treat a person of the opposite sex.

Section 11. Massage or private parts for hire prohibited.

It shall be unlawful for any person to massage or to offer to massage the private part of another for hire. "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading

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or tapping, by hand or mechanical device. "Private parts" means the penis, scrotum, mons veneris, vulva or vaginal area. The provisions of this section shall not apply to licensed medical practitioners, osteopaths or chiropractors, or persons operating at their discretion in connection with the practice of medicine, chiropractic, or osteopathy.

Section 12. Privilege license annual.

The licenses required under this article are annual privilege licenses. Such licenses shall be due and payable in the same manner as prescribed for other privilege licenses issued by Union County pursuant to the license and privilege tax ordinance of the County.

Section 13. Penalties.

Any person convicted of violating any provisions of this article shall be punished by fine or imprisoned as provided by North Carolina General Statutes 14-4.

Section 14. Separability.

If any section, subsection, sentence, clause, phrase or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

This ordinance shall be in full force and effect from and after the 4th day of January, 1977, at 10:00 o'clock P..M.